



US Army Corps  
of Engineers.

SOUTH PACIFIC DIVISION/SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

NUMBER: 97-1A (FINAL)

DATE: July 18, 1997

Regulatory Branch  
333 Market Street  
San Francisco, CA 94105-2197

## NATIONWIDE PERMIT REGIONAL CONDITIONS FOR THE SANTA ROSA PLAIN, SONOMA COUNTY

web page: <http://www.spn.usace.army.mil/regulatory/>

**BACKGROUND:** On February 13, 1997, the Corps of Engineers issued Public Notice 97-1 proposing to add regional conditions to various nationwide permits (NWP) that became effective on February 11, 1997. Several proposed regional conditions pertained to the Santa Rosa Plain in Sonoma County. Except for NWP#14, Road Crossings, these conditions were the same ones that were in effect under the 1992 NWPs that expired on January 21, 1997. The proposal was to extend these same conditions to the new, 1997 NWPs (NWP#26 and #29), and to add a notification requirement to NWP#14 for the Santa Rosa Plain.

The Corps received no unfavorable comments to the proposed regional conditions for the Santa Rosa Plain. Accordingly, upon the recommendation of the San Francisco District, the Division Engineer, South Pacific Division is promulgating the following regional conditions for NWP#14, NWP#26, and NWP#29 within the geographic area of the Santa Rosa Plain (see Figure 1). These conditions are effective on the date of this public notice.

### NATIONWIDE PERMIT REGIONAL CONDITIONS FOR THE SANTA ROSA PLAIN, SONOMA COUNTY

#### NWP#14, ROAD CROSSING

Regional condition: Use of this NWP on the Santa Rosa Plain will require a delineation of waters of the U.S., and a PCN (Pre-Construction Notification) to the Corps of Engineers as per General Condition No. 13. Approved surveys for Federally-listed endangered species may also be required if the Corps determines endangered species may be impacted. Survey protocols must be approved by the U.S. Fish and Wildlife Service before the surveys are undertaken. Note that the notification to the Corps is required for all waters of the U.S. in the Santa Rosa Plain, whether the proposed road crossing would occur in a special aquatic site (e.g., wetlands or vernal pools) or not.

#### NWP#26, HEADWATERS AND ISOLATED WATER DISCHARGES

Regional condition: Use of the NWP on the Santa Rosa Plain will require notification to the Corps of Engineers as per General Condition No. 13, even for discharges causing the loss of less than 1/3 acres.

The following criteria shall apply to the Santa Rosa Plain:

- (1) Discharges into wetlands and other waters of the U.S. that have all of the following characteristics may be authorized by NWP#26.
  - (a) Lack of past or present evidence that rare or endangered plant or animal species, or their habitat, are present (supported by U.S. Fish and Wildlife Service-approved surveys); and
  - (b) Are dominated in all seasons by perennial plants or exotic annual plants; and
  - (c) Are not contiguous with or hydrologically connected to other isolated waters as described at (2), below; and
  - (d) The discharge would not affect isolated waters described at (2) below.

The Corps retains the discretion to make final decisions on whether a particular project qualifies for NWP#26. Any recent changes in management activities, or any other activities that could be interpreted as degrading or changing the plant community could be a reason to require an individual permit.

- (2) Discharges into wetlands and other waters of the U.S. that have one or more of the following characteristics can be authorized only with an

individual permit:

- (a) Contain a more than minimal component of native wetland plant species (at any season) based on appropriate measures of either density, frequency or abundance which are derived from scientifically sound sampling methods; or
- (b) Would contain such a component of native wetland plant species without recent or on-going human intervention; or
- (c) Are contiguous with wetlands so dominated; or
- (d) Support or have a history of supporting any federally proposed or listed threatened or endangered species.

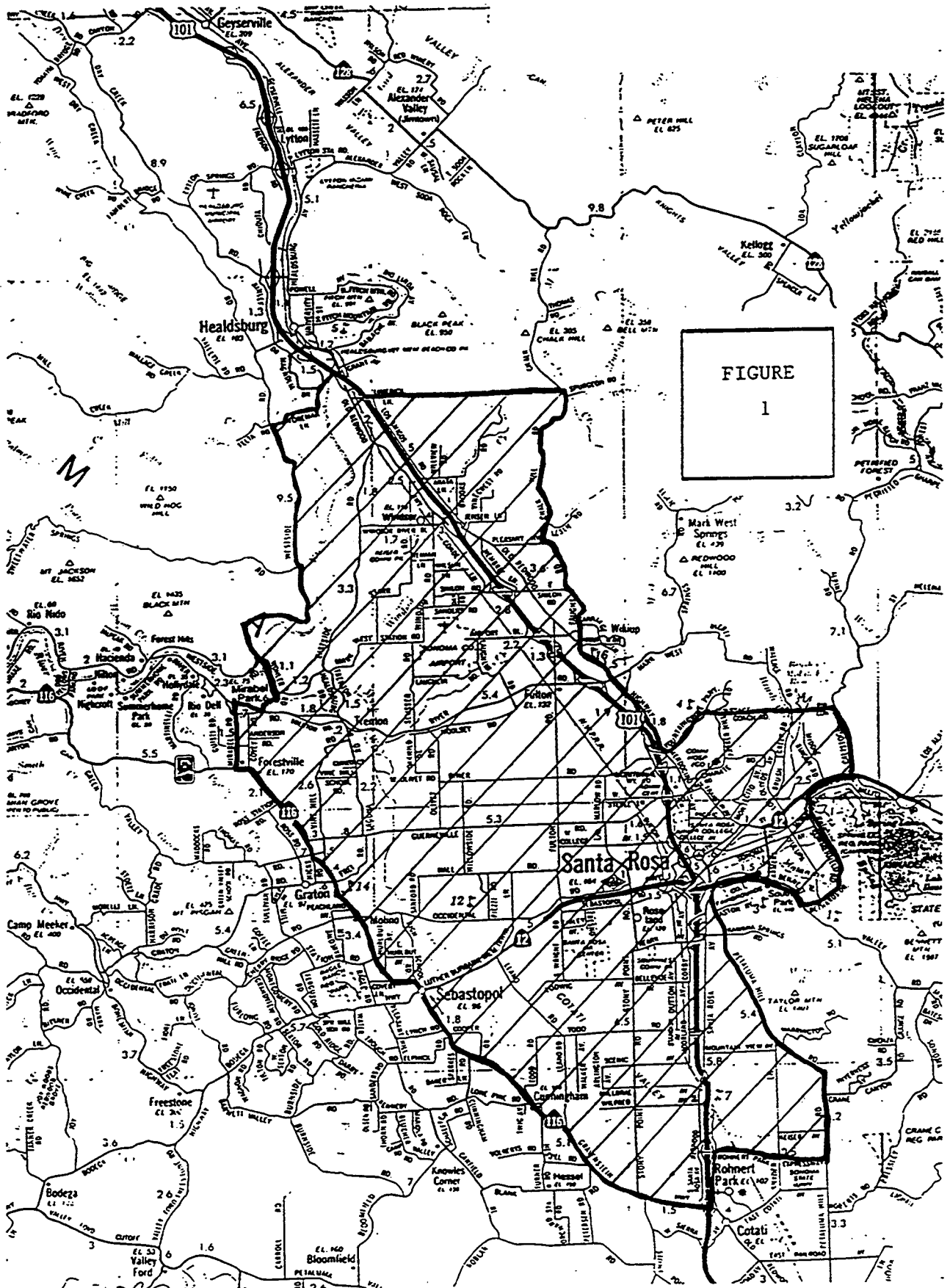
#### **NWP#29, SINGLE-FAMILY HOUSING**

##### **Regional Conditions:**

- (1) Use of this NWP on the Santa Rosa Plain will require notification to the Corps of Engineers as per General Condition No. 13.
- (2) Construction of any septic system in a wetland or other waters of the U.S. with a high ground water table (at any time of the year) is not authorized by this NWP.



J. Richard Capka  
Brigadier General, U.S. Army  
Division Engineer



# DECISION DOCUMENT

*For*

## Nationwide Permit Regional Conditions

*On The*

### Santa Rosa Plain, Sonoma County, CA

This document constitutes my Environmental Assessment and Statement of Findings for Nationwide Permit (NWP) regional conditions on the Santa Rosa Plain, Sonoma County, California.

- I. Background:** NWP regional conditions have been in effect on the Santa Rosa Plain since March 1994. These conditions were added, after an opportunity for public comment, because of the growing concerns over land-use impacts on three Federally listed endangered plant species unique to vernal pools and seasonal wetlands in Sonoma County. For further details on the background, see Public Notice No. 93-4(Final) attached (attachment 1).

Since the 1992 NWPs expired in January 21, 1997, any regional conditions associated with those NWPs also expired. The recommended conditions in this document, as described in PN No. 97-1, dated February 13, 1997 (attachment 2), are the same that became effective in 1994. Note that PN No. 97-1 proposed NWP regional conditions that were SPN-wide. For the sake of expediency and the immediate need to impose added regional conditions on the Santa Rosa Plain to protect endangered species endemic to the area, this Decision Document addresses only the regional conditions and NWPs pertinent to the Santa Rosa Plain. A separate Decision Document will be prepared for the other proposed regional conditions at a later date.

**II. Environment and Public Interest Factors Considered:**

- A. Purpose and Need:** The purpose of the proposed regional conditions is to insure adequate protection for the seasonal wetlands and vernal pools unique to the Santa Rosa Plain in Sonoma County, and at the same time retain the NWP program intact for those activities that have only minimal impacts. The regional conditions require certain information for the endangered plant species, and set forth criteria necessary to determine whether proposed projects could qualify for a NWP.

## B. *Alternatives:*

1. ***No Regional Conditions:*** No regional conditions would allow projects potentially qualifying under NWP Nos. 14, 26 and 29 to proceed without adequate review by the Corps of Engineers and other agencies on sensitive aquatic habitats. For example, under NWP No. 26, projects impacting less than 1/3 acre of aquatic habitat would be non-reporting, even if the area contains sensitive species. NWP No. 14 has a Pre-construction Notification (PCN) requirement for special aquatic sites to the Corps of Engineers only but there are no survey requirements for endangered species, and no coordination requirements with the other Federal agencies. Similarly, NWP No. 29 has a PCN requirement to the Corps of Engineers only with no provisions to address sensitive habitat or coordinate with other agencies.
2. ***Suspend NWP Nos. 14, 26 and 29 and Require Individual Permits on the Santa Rosa Plain.*** This was an alternative when the Corps of Engineers initially raised the possibility of modifying NWP No. 26 on the Santa Rosa Plain in 1993. After receiving public comments in 1993 the Corps of Engineers decided suspending the NWPs would be too drastic and would over-burden projects that would have only minimal impacts. NWP regional conditions were added instead, since added protection would occur when evidence suggests such a need.

## C. *Impacts on the Aquatic Environment, Including Endangered Species:*

Since the proposed regional conditions would add a more in-depth review of sensitive aquatic habitats by the Corps of Engineers and other agencies than would otherwise occur under the present NWP program, the aquatic environment and associated endangered species would have greater protection. Also, the added condition of not allowing construction of septic systems in areas of high ground-water table under NWP No. 29 would prevent potential degradation of water quality in seasonal wetlands.

## III. Findings

### A. *Other authorizations:*

1. ***Water Quality Certification:*** The North Coast Regional Water Quality Control Board (RWQCB) in Santa Rosa did not respond to the PN. Furthermore, the State Water Quality Control Board has already denied Clean Water Act Section 401 Water Quality Certification for NWP Nos. 14 and 26 (Category 3), and certified NWP No. 29 with conditions (Category 1) for the state of California. All PCN's to the Corps of

Engineers, as required by the proposed regional conditions, will be sent to the RWQCB for state appropriate action.

2. ***Coastal Zone Management Act:*** No coastal zone management consistency determination is required since the Santa Rosa Plain is outside of California's coastal zone.

B. ***Summary of Comments Received:*** Nine (9) comment letters were received in response to PN 97-1, of which only five (5) pertained to the Santa Rosa Plain or NWP Nos. 14, 26 or 29.

1. No Federal or state agency commented on the proposed conditions for the Santa Rosa Plain.
2. The Marin Audubon Society and Sierra Club (letters of March 12, 1997): recommended revocation of NWP Nos. 14, 26 and 29 for California. They implied that if revocation is not selected, then at least require regional conditions similar to what was proposed for the Santa Rosa Plain to apply SPN-wide.
3. The Environmental Forum of Marin (letter of March 13, 1997) and the League of Women Voters of the Bay Area (letter of March 14, 1997) recommended endangered species surveys for the entire Bay Area, not just for the Santa Rosa Plain. They also recommended revocation of NWP No. 26 SPN-wide.
4. The Guadalupe-Coyote Resource Conservation District (letter of March 14, 1997) recommended NWP No. 29 be revoked in California.

C. ***Evaluation:***

I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning the proposed NWP regional conditions for the Santa Rosa Plain, and the stated views of other interested agencies and the concerned public. In doing so, I have considered the possible consequences of this action in accordance with regulations published in 33 CFR 330.5(c). The following includes my evaluation of comments received and how this proposal complies with the above-cited regulations.

1. ***Consideration of Comments:***

- a. **Suspension or Revocation of NWP's on the Santa Rosa Plain:** This was already considered as an alternative (see paragraph IIB.2). The proposed regional conditions will afford the necessary protection and agency coordination when appropriate. This strikes

a balance between unnecessary regulation, and protection of endangered species and sensitive aquatic habitat.

- b. Issues such as revocation of NWP Nos. 14, 26 and 29 for the entire state, or require Santa Rosa Plain NWP regional conditions to apply also to the Bay Area or SPN-wide will be addressed in a separate Decision Document. This document only pertains to the Santa Rosa Plain.
2. ***Other Considerations:*** Sonoma County and several cities (including the City of Santa Rosa) recently applied for a Regional General Permit (RGP) for any development in low-value wetlands that does not contain endangered species on the Santa Rosa Plain. A Public Notice will be issued within the next few months, after specific details are clarified with the applicants and agencies on the Santa Rosa Plain Vernal Pool Task Force. Depending on the outcome of the public interest review process, the RGP may take the place of all NWP's in the Santa Rosa Plain. Since this proposed RGP may generate concerns, and the process may become protracted, it would be too premature to predict whether the NWP's would be suspended. In the meantime, regional conditions are still needed to provide appropriate protection for vernal pools and other sensitive aquatic habitats on the Santa Rosa Plain.
3. ***Evaluation of Compliance with 404(b)(1) Guidelines:*** Since this is not a proposal to authorize a discharge of fill or dredged material, the Guidelines do not apply. However, the proposed NWP regional conditions would offer greater environmental protection than the *status quo* because the conditions would require more specific information about the status of endangered species and the aquatic habitat to be impacted. Also, not authorizing construction of septic systems in areas of high ground-water table under NWP No.29 protects water quality.

#### IV. Determination

- A. **FINDING OF NO SIGNIFICANT IMPACT (FONSI):** Based on the above information, adding NWP regional conditions for the Santa Rosa Plain would not have a significant impact on the quality of the human environment and the preparation of an Environmental Impact Statement (EIS) is not required.
- B. ***Public Interest Determination:*** Based on the above information, I find the addition of NWP regional conditions as allowed in 33 CFR 330.5 is not contrary to the public interest.

- C. ***Section 176 of the Clean Air Act General Conformity Rule Review:***  
Since the proposal is not a construction project that will impact air quality, the conformity review is not applicable. However, all the NWP's were reviewed for conformity before they were issued by HQUSACE, and determined that they will not exceed *de minimis* levels of direct emissions of a criteria pollutant or its precursors and are exempt by 40 CFR 93.153.

RECOMMENDED BY:



Wade L. Eakle, Ecologist and Regulatory  
Program Manager

APPROVED BY:



JUL 16 1997

J. Richard Capka  
Brigadier General, U.S. Army  
Division Engineer